

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

DIRECT COLLECTION SERVICES, LLC,]	
]	CASE NO. 13CVF-10403
Appellant]	
]	JUDGE REECE
vs.]	
]	
LIQUOR CONTROL COMMISSION]	
]	
Appellee]	

DECISION AND JUDGMENT ENTRY AFFIRMING THE ORDERS OF
THE LIQUOR CONTROL COMMISSION
AND
NOTICE OF FINAL APPEALABLE ORDER

REECE, JUDGE

This case is before the Court on an appeal under R.C. 119.12 from Orders of the Ohio Liquor Control Commission (the “Commission”).

Appellant appeals from six September 5, 2013 Orders of the Commission that reconsidered the penalty for various administrative code violations. During the administrative hearing, Appellant’s counsel stated: “Again, we’re not denying the conduct. We stipulated to it. We’re here just solely on – on the penalty.” (August 15, 2013 Hearing Transcript, p. 6).

Appellant’s brief in this appeal solely addresses the penalty imposed by the Commission for the violations. Appellant’s first assignment of error asserts that the penalty, revocation or a \$12,500 fine, is “severe” and “unprecedented.” (Brief, p. 4). Appellant’s second assignment of error reviews evidence offered in mitigation of the penalty and asserts that the penalty is too severe for a first offense. (Brief, p. 8).

This Court must affirm an order of the Commission if the order is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108, 111 (1980).

In *Henry's Café v. Board of Liquor Control*, 170 Ohio St. 233 (1959), the Ohio Supreme Court held as follows:

On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion. [paragraph three of syllabus]

See also Hale v. Ohio State Veterinary Medical Board, 47 Ohio App.3d 167 (1988) (if the penalty is within the range of choices for the infraction, the court must affirm the order even if the penalty is viewed as too harsh) and *King v. State Medical Board*, Tenth Appellate District, No. 98AP-570, 1999 Ohio App. LEXIS 201, p. 4 (“[T]he common pleas court, in concluding the board’s order is supported by reliable, probative and substantial evidence, is precluded from interfering with or modifying the penalty imposed if such penalty is authorized.”)

There is no question that the Commission was authorized to impose the penalty in this case. R.C. 4301.25(A) provides that the Commission may suspend or revoke a liquor permit for violation of any lawful rule of the Commission. Because Appellant has not appealed from, or contested, the violations, this Court has no authority to modify the penalty imposed by the Commission.

For the foregoing reasons, the Court finds that the Commission’s Order is supported by reliable, probative and substantial evidence and is in accordance with law. The Commission’s Order is, therefore, **AFFIRMED**. This is a final, appealable Order. Costs to Appellant.

Franklin County Court of Common Pleas

Date: 02-12-2014
Case Title: DIRECT COLLECTION SERVICES LLC -VS- OHIO STATE
LIQUOR CONTROL COMMISSION
Case Number: 13CV010403
Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 13CV010403

Case Style: DIRECT COLLECTION SERVICES LLC -VS- OHIO
STATE LIQUOR CONTROL COMMISSION

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes